



Technical Trade Report

Updates on Key Trade Policy Issues Affecting APHIS

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Letter from TST Director

This is the first Technical Trade Report of the new year. Our objective in this report is to provide some brief analysis of issues and trends in global trade and their implications for APHIS. As most readers know, APHIS role in trade is limited to managing sanitary (animal health) and phytosanitary (plant health) issues that affect the international (and interstate) movement of commodities. This is challenging activity for APHIS given the complex nature of these issues and their substantial impact on US trade and, sometimes, diplomatic relationships with other governments. This report attempts to help the Agency anticipate and respond to international trends and demands by identifying the latest developments and directions in trade policy.

Let's begin with some of the significant changes in leadership within APHIS. Bobby Acord, was recently made the new Administrator of APHIS. Bobby brings extensive experience and knowledge of APHIS programs, including a full understanding and appreciation of APHIS' evolution from being a domestic-centric organization to becoming an active player in the international arena. Bobby has already played a decisive role in helping resolve some difficult phytosanitary trade issues by becoming personally engaged in problem solving with regulatory counterparts in Mexico, Australia, and elsewhere.

Also, two of APHIS' top foreign service veterans, Ralph Iwamoto and Peter Fernandez, are now in Washington, DC, leading APHIS' International Services (IS) division on a provisional basis as

Acting Deputy Administrators. Peter and Ralph bring to headquarters a rich record of accomplishments in advancing US safeguarding and SPS trade interests overseas, as well as tremendous management experience.

On the debit side of the leadership ledger, we sadly bid farewell to Alfonso Torres, the current head of Veterinary Services (VS). Alfonso will become the new Dean of the Veterinary School at Cornell University. To his credit, Alfonso took some important steps within VS to improve its alignment with the other units and resources within APHIS. In this regard, he established the Sanitary Issues Management (SIM) team to work in greater collaboration with my staff (Trade Support Team - TST) and our attaches posted overseas. While the integration of these trade support units is far from complete, Alfonso's efforts have helped start a process of improving VS connections to the trade management engines within APHIS.

These leadership changes have certainly stirred the pot. It is still unclear (at the time of this writing) who will lead VS and IS, and who will fill the Associate Administrator position. These positions have a huge influence on the tone and emphases in APHIS with regard to our international activities and bilateral relations with foreign regulatory counterparts. Personally, I am confident and excited by the prospects that exist for filling these leadership positions with savvy, experienced, and practical minded senior managers.

Closer to home (meaning my own staff on the TST), I am genuinely thrilled by our most recent hire – Anna Sheinberg.

Anna will manage the Agency's central data base for tracking the myriad SPS trade issues we have with 35-plus countries. Anna's arrival at this time is absolutely critical given the ambitious trade agenda of the current Administration and our need to sort, monitor, and address the countless bilateral trade issues involving APHIS. While resources have been directed to resolving issues on a daily and operational basis, we have not, until Anna's arrival, dedicated the necessary resources to strengthening our ability to oversee and monitor this activity for management and control purposes. Welcome Anna.

Already we can see that the year ahead will be chockfull of challenges for the Agency, most of these having significant and complex international implications. A new multilateral round of trade negotiations was launched at the end of 2001, with negotiations to begin in earnest this year. China's recent accession to the WTO presents both dramatic market access opportunities and problems related to their compliance with their SPS obligations. We are currently considering our options for shifting resources to better manage and respond to these technical trade issues as they arise.

In addition, the Administration will press forward with the hemispheric free trade talks concerning the Free Trade Areas of the Americas (FTAA). Most recently and significantly, the Office of the U.S. Trade Representative (USTR) has indicated that it will seek to engage a number of countries in possible negotiations of Free Trade Agreements (FTAs). The USTR's goal is to complete the US-Chile FTA and begin

exploratory FTA discussions with Australia and the group of Central American states. In all these negotiations, agricultural trade will be a central, and pivotal, topic. And, in the context of agricultural trade are the ubiquitous and complex sanitary and phytosanitary (SPS) trade barrier issues.

In these international discussions, countries will essentially continue to maintain their basic right to protect against legitimate health risks associated with trade while remaining bound to the principle that health regulations be technically justified and the least restrictive measures available. We do not anticipate any renegotiation of the existing rules contained in the WTO SPS Agreement. However, countries continue to be frustrated by the technical and political complexity of SPS issues and their persistent irritation in trade. For these reasons, countries, engaged in the current multilateral or bilateral trade initiatives, are likely to address current SPS trade problems by discussing: 1) establishment new committees, venues, or other mechanisms where these issues can be openly discussed by appropriate officials; 2) adoption of new or additional provisions for "cross" or "counter" notifications in order to increase the transparency of SPS measures and the scientific rationale underlying them; and, 3) technical assistance aimed at developing the capacity of less developed countries to fully implement their SPS obligations and secure the benefits associated with an open trade system.

Within APHIS, efforts will continue to be made to improve our capacity for responding to unjustified foreign SPS trade barriers. We will continue to focus

on: aligning resources to the most significant markets and risk pathways; promoting the continued integration of internal APHIS staffs (both headquarters and field) who have SPS-trade responsibilities; strengthening our management systems for monitoring and analyzing issues; stimulating the development of new innovative risk management options for ensuring safe exports; working actively with other countries on the establishment of regional and international standards; and, coordinating closely with the Foreign Agricultural Services (FAS) and USTR.

John K. Greifer
Director, Trade Support Team

Doha Launches New Trade Round

The World Trade Organization (WTO) held its fourth Ministerial Conference in Doha, Qatar, from November 9 to 13, 2001. The resulting Ministerial Declaration launched a broad work program for WTO members, including continued trade liberalization in agriculture. Negotiations on agriculture had already been initiated in early 2000, as called for in the Uruguay Round Agreement on Agriculture. The work program calls for modalities for further commitments to be established by the end of March 2003. The negotiations on agriculture will be concluded at the time the entire negotiating agenda is brought to a close.

Negotiators will not be considering changes to the text of the SPS Agreement as part of this new Round of trade talks. However, the outcome of

negotiations in a number of areas will be of interest to APHIS and other agencies involved in trade-related SPS issues.

Increased pressure to provide protection through SPS measures - As tariffs are lowered and import quotas expanded, the pressure to provide protection against commercial competition for domestic agricultural producers increases. This reasoning underlay the decision of negotiators to create the SPS Agreement at all, as agricultural trade was brought more fully under international disciplines in the WTO.

The negotiations on continuing the reform process for agricultural trade will focus on lowering tariffs, increasing import access quotas and reducing both export subsidies and domestic support payments.

Implementation-related issues and concerns

Some members, chiefly developing countries, have identified problems with the implementation of the WTO Agreements, including the SPS Agreement, as preventing them from benefiting fully from the WTO system. At Doha, the Ministerial Conference adopted a number of decisions relative to implementation matters, including providing for a review of the SPS Agreement every four years.

One of developing countries' main concerns in the SPS area is the amount of time they have to adjust to new, more stringent SPS measures put in place by developed countries. To address this concern, Members agreed that, where the appropriate level of sanitary and

phytosanitary protection allows scope for the phased introduction of new sanitary and phytosanitary measures, the phrase "longer time-frame for compliance" referred to in Article 10.2 of the Agreement will be understood to mean not less than 6 months. Where a phased introduction is not possible, the country implementing the measure will enter into consultations with an exporting country which identifies particular problems with the new measure, to try to find a mutually acceptable solution. Also, the "reasonable interval" between the publication of an SPS measure and its entry into force, referred to in Annex B, para. 2 of the Agreement, was determined to be understood to mean, normally, at least six months, subject to certain conditions.

The SPS Committee has been discussing implementation-related concerns, including phased introduction, for some time. These discussions have also addressed the issue of equivalence of SPS measures. According to the decision of the Members following the Ministerial, the SPS Committee is to develop a specific work program to further the SPS Agreement provisions on equivalence, contained in Article 4.

Technical cooperation and capacity building

Implementation issues and technical assistance have been closely linked in the discussions of the SPS Committee. Obviously, technical assistance and capacity building in developing countries will enhance their ability to participate in the WTO system and benefit more fully from the provisions of the SPS Agreement. The Ministerial

decision on implementation urged Members to provide assistance to developing country Members, both relative to particular new trade measures which may affect their trade, and to their ability to implement the Agreement generally.

Trade and the environment - WTO

Members also committed to negotiations on the relationship between existing WTO rules and trade obligations contained in multilateral environmental agreements (MEAs). For example, the Biosafety Protocol, under the Convention on Biodiversity, contains trade-related provisions relative to living modified organisms (LMOs), that may differ from the obligations under the SPS Agreement. The negotiations will also explore procedures for information exchange between the Secretariats of the MEAs, and the appropriate WTO committees.

The WTO committee on trade and the environment was directed to emphasize work on the effect of environmental measures on market access (especially for developing countries) and on labeling requirements for environmental services. The committee is to develop recommendations for the next Ministerial Conference to consider. The Ministerial Declaration notes that negotiations in this area "shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures."

Developing Countries Play Greater Role

One of the factors that contributed to the failure of the previous Ministerial Conference, In Seattle in 1999, was the frustration on the part of developing countries with a decision-making process that largely excluded them. In the lead-up to Doha, developing countries made very clear that their interests would have to be addressed expressly if there were to be a new Round of trade talks. The Ministerial Declaration reflects this situation, with numerous references to the special needs of developing countries. In addition to the extensive work programs on implementation, Members adopted decisions on aid to least-developed countries, and special and differential treatment for developing countries.

Special and differential treatment refers to special rights of developing countries, such as longer time periods for implementation of commitments, or measures to increase their trade opportunities. The Declaration on Implementation-Related Issues and Concerns instructs the Committee on Trade and Development to identify which special and differential treatment provisions are mandatory, and to consider the implications of making non-binding provisions mandatory. The Committee will make recommendations to the WTO General Council before July 2002.

China Joins the WTO – Now What?

With its recent accession to the World Trade Organization (WTO), China joins the majority of the world's economies in an organization which has the goal of developing an integrated, more viable and durable multilateral trading system encompassing the General Agreement on

Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations. The accession of a country which makes up one-fifth of the world's population, and whose economy is rapidly expanding would seem to portend nothing but good news for the United States, and for United States agriculture in particular.

Before going any further, let's get one thing straight. China did not join the World Trade Organization solely for our benefit, and the benefit of other WTO members. No country would ever take such an economically significant action solely out of a need to please its trading partners. The Chinese certainly analyzed and debated entry into the WTO to the greatest degree possible – there was, and remains, significant political and public opposition to WTO membership. There has to be some type of positive return that sold the country's leadership on joining the WTO. Nevertheless, there are some very tangible benefits to the United States that began to take effect even prior to the official accession of China to the WTO. In order to get the approval of the United States for membership in the WTO the Chinese had to reach an agreement with the United States (as well as other members). For agriculture, this meant, among other things, opening the Chinese market for US citrus, meat, and Pacific Northwest wheat. These commodities were not easily granted access, and there are still some aspects of the market access that still need to be tweaked, but market access is in place. US tobacco also gained access, in my opinion, because the Chinese were making every attempt to ensure domestic US support for Permanent Normal Trade Relations.

But what does WTO accession portend for the Chinese? For one thing, they now have to be treated the same way as everyone else, i.e., national treatment. National treatment means that products of any member imported into the territory of any other member shall be accorded treatment no less favorable than that accorded to like products of national origin. It also means that the Chinese will receive most favored nation treatment as well, meaning any advantage, favor, privilege or immunity granted by one member to any product originating in or destined to another member, shall be immediately and unconditionally accorded to like products originating in or destined to all other members.

These two specific core principles mean that Chinese products must be treated equally, and for a whole lot of countries, this means that things that the Chinese produce in large quantities need to be treated the same way as things other countries don't quite produce in such large numbers. I see this as dictating an increasingly competitive atmosphere for agriculture products, especially those commodities that are in demand by the large and expensive Japanese market. If you go to the Port of Yokohama in Japan, you will see numerous containers of fresh produce coming into the country from China. Qualitatively, the Chinese produce is nearly equal to anything else being provided to the demanding Japanese market. Quantitatively, the Chinese could possibly flood markets with lower cost high quality products should they choose to do so. Based on this alone, we can expect to see more aggressive marketing of Chinese produce in markets where the US would

like to maintain or increase its share. While I've been discussing Japan in this paragraph, we shouldn't lose sight of the fact that Taiwan (also a new WTO member), Korea, the Philippines and Thailand are in the top twenty US agriculture export markets and the Chinese are going to be ready to go head to head with us in citrus and apples among other things in those markets. And the familiar (for those who work on China) concept of "guangxi" or relationship will play a significant part in trading relationships with members of the so-called "greater China" who make up many significant parts of the market infrastructure in several Asian countries. It certainly should seem to be easier to come to a business arrangement on a Chinese commodity with a person who speaks your own language with shorter shipping distances, and cheaper prices than the representative of the US commodity in competition.

There used to be a time when there was great concern over whether or not the Chinese could produce enough food to feed its people, and when China could no longer do so, the result was expected to be revolution and war. That is no longer the long view for China. At the moment the Chinese are doing well in terms of domestic self-sufficiency. A New York Times article in October 2000 noted that the country is "sitting on mountains of surplus grain and can no longer buy all that its farmers grow." We also see that the Chinese are aggressively researching and developing a biotechnology infrastructure. The very same New York Times article noted that under the leadership of Deng Xiaoping, China launched a project aimed at achieving superiority in biotechnology. The article notes that since that project

was launched, China was the first country in the world to grow genetically engineered crops commercially, starting with a virus resistant tobacco.

This development can be seen in two lights. In international fora, we should be able to expect that China will be an ally in discussions on biotechnology. On the other hand, however, we should also expect intense competition from China in the technology.

A potentially darker perspective on Chinese WTO membership for the US is that the domestic producers, the Chinese farmers, will need to be placated for the losses they are expected to suffer as a result of an opening to products which can compete with what they are currently producing. The Communist Party leadership will never lose sight of the fact that the revolution was won on the backs of the peasants and that in many ways they “owe” those who work on the land. Somehow, in some fashion, the Chinese leadership is going to “make good” for the peasants. The only problem is that I’m not sure what in fact this will entail. I’m not even sure that the Chinese leadership even knows exactly what it can or will be doing (maybe that’s why the senior leadership is retiring this year – they will leave to the next generation to figure out!).

We can be sure that China will try its best to implement its WTO responsibilities, although whether or not they will do so in a fashion that makes sense to us is another story. We can be sure that China will try to adhere to the requirements of the agreements to which it is a signatory, although how they adhere to the agreements is going open to question. From the quarantine

perspective, the Chinese have had a formal quarantine infrastructure in some form since about 1927. As has been noted previously, APHIS has been meeting on a fairly regular basis with the Chinese to discuss technical issues for several years; we will continue to do so in the future.

In many ways the relationship will begin anew. China will need to play by international rules and standards to which they have agreed. Nevertheless, China will still be China. Chinese negotiators will continue to do the best they can for their country (just as APHIS negotiators try to do for the US). There will be bumps along the way to be sure, but in the end I think that with specific regard to the nature of quarantine issues, issues that rely extensively on science and scientific nuances, discussed between scientists and technical personnel, may improve a little bit in that there is an internationally-recognized blueprint, the SPS Agreement with which to work.

FTAA

Status of Free Trade Area of the Americas Negotiations

Introduction

The FTAA is comprehensive trade deal that was launched by an agreement of the leaders of 34 countries in the Western Hemisphere during the 1994 "Summit of the Americas". This hemispheric trade deal is supposed to come into effect in 2005.

Given the importance of agriculture trade in the region, a negotiating group on agriculture (NGAG) was established

and currently meets in Panama City three to four times a year. The group is chaired by Guatemala, and vice-chaired by Uruguay. Sanitary and phytosanitary issues are prominently considered within these negotiations. The last NGAG round of negotiations to focus heavily on how member-countries should to address SPS issues affecting trade was held December 18-19, 2001.

Mechanisms for Full Implementation of the WTO-SPS Agreement in the Hemisphere

The current challenge before the negotiators is to construct procedures for encouraging closer adherence to the existing disciplines laid down in the WTO-SPS Agreement. This has been a difficult task.

While there seems to be an emerging consensus that the WTO-SPS Agreement itself should not be modified under the FTAA, there are widely divergent perspectives over how the FTAA might facilitate fuller compliance of the SPS Agreement in the hemisphere.

At one extreme, some delegations have suggested that rules be established to compel countries to enter into technical exchanges until regulatory measures are created that allow trade to occur. More realistic proposals call for the creation of a hemispheric SPS Committee that would be responsible for managing issues before they become serious trade disputes.

For its part, the US delegation has tabled two proposals to enhance implementation in the hemisphere. One proposal suggests mechanisms for facilitating "equivalency" determinations

in the area poultry and meat inspection procedures. Streamlining recognition of domestic and foreign procedures could allow for expanded trade in these products.

The second proposal considers enhancements to the concept of "regionalization". By streamlining regionalization approval procedures, providing notifications of such these approvals, and seeking greater participation by hemispheric standards-setting bodies in setting criteria and standards for approving pest-free and low-prevalence areas, trade opportunities could be expanded in the hemisphere. This proposal drew heavily from the 1997 APHIS Regionalization Policy statement and existing approval standards and procedures. Key to this proposal is the concept of positive notification by FTAA members of each instance in which one member recognizes pest-free and low-risk zones of another for the purposes of new trade opportunities.

Transparency through Counter-Notification

One mechanism being considered in the NGAG for shedding light on questionable SPS measures and practices is the use of "counter-notifications". The concept of counter-notification -- where one or more countries levels complaints against the SPS actions of another during the proceedings of WTO-SPS Committee meetings -- is not new. The WTO process, called "cross-notification", is less formal than invoking Dispute Settlement, but still allows members to air complaints before the full Committee.

While the NGAG has tentatively agreed that countries should be encouraged to counter-notify their complaints with respect to others' SPS measures, still open to negotiation is what, if any, response should be taken by the targeted country or the FTAA as a whole.

Again, the range of proposed options runs the gamut. Some FTAA negotiators want to go further than the existing WTO process by creating rules that would require targeted countries to react to the complaints in specific ways. At one extreme, countries would be required to hold bilateral talks until mutually satisfactory import measures are created and trade occurs. If unsuccessful, the issue would then move to FTAA binding arbitration.

Other delegations have noted that a more practical outcome of an exchange of counter-notifications would allow the NGAG to systematically gather information about the scope and pattern of SPS issues in the hemisphere, before trying to design procedures to address them. While the creation of an FTAA-SPS Committee may be one solution to managing hemispheric SPS issues, or to serve as a venue for establishing resolution procedures, this too is still very much open to negotiation.

The NGAG is facing an April 2002 deadline for submitting recommendations to the Trade Ministers -- who are negotiating the deal at a broader level -- on ways to insure that SPS measures are not unjustified barriers to trade. Increasing transparency through a counter-notification process could become the mechanism for encouraging this outcome.